

REMARKS

Reconsideration of the application, as amended, is respectfully requested.

This RCE is presented to amend the claims to better define the invention. This RCE is also presented to enable the Office to consider some additional references.

Claim 1 has been cancelled without prejudice. New claim 24 is presented. Claim 24 finds support in the example (page 17) wherein bacteria are treated by pasteurization. New dependent claims 25 and 26 also find support in the example. New dependent claim 27 recites the amount of non-viable *Lactobacillus*, which finds support in the paragraph bridging pages 6 and 7.

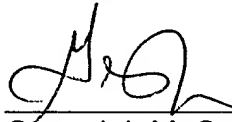
As pointed out in the amendment of August 25, 2004, the term "probiotic" is used appropriately herein. The claims are directed to a probiotic which has been rendered non-viable. Thus, although probiotics are characterized as viable on page 5 of the present specification, this is not inconsistent with what is being claimed in that something which is a probiotic is then rendered non-viable. Moreover, as has been mentioned in the literature of record, in some cases probiotics can show efficacy even in non-viable form.

With respect to the Lee et al. reference, it is submitted that the bacteria in Lee and in the present invention are in fundamentally different conditions. Lee et al. render bacterial cells "non-viable," for example by radiation with gamma rays at a particular dosage. The treatment is apparently insufficient to destroy the fermentation apparatus of the organism, but rather prevents the organism from multiplying. In contrast, the present invention utilizes processes such as pasteurization, which renders the organisms substantially incapable of fermentation. Thus, although Lee in column 1 talk

of the possibility at lines 44-50 that fermentation may not be desired but can occur at higher temperatures which would inhibit food poisoning bacteria, in the present invention the non-viable bacteria as such would be obtained by pasteurization, and so are incapable of fermentation.

In view of the foregoing, it is respectfully requested that the application, as amended be allowed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. McGowan, Jr.', is written over a horizontal line.

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